IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

ABRAHAM LAUDERMILK and M.C. ROGERS — PLAINTIFFS

v. — Civil Action No. 1:95cv161-D-D

GOVERNOR KIRK FORDICE, et al. — DEFENDANTS

MEMORANDUM OPINION

Presently before this court are the plaintiffs' motions for actual damages and attorney's fees. Having considered said motions and the responses thereto, this court is of the opinion that the motion for actual damages is not well-taken and should be denied, and that the motion for attorney's fees is well-taken and should be granted.

. Factual and Procedural Background

On May 16, 1995, the plaintiffs filed this action challenging the constitutionality of Section 19-5-22(4) of the Mississippi Code.[1] As it read then, the statute authorized state tax collectors to refuse to issue or renew automobile license tags for persons who were delinquent in paying garbage disposal fees. The plaintiffs complained that the statute was unconstitutional because it failed to provide a pre-deprivation hearing. The failure to provide such a hearing, the plaintiffs argued, violated the plaintiffs' procedural due process guarantees under the Fourteenth Amendment to the United States Constitution and under the Mississippi Constitution of 1890. On July 19, 1996, the plaintiffs incorporated their argument into a motion for summary

[1] The complaint cites subsection (3) of § 19-5-22. However, in 1996 the Mississippi Legislature amended § 19-5-22, moving the disputed provision from subsection (3) to subsection (4).

judgment. By order dated December 12, 1996, this court granted the plaintiffs' motion and deemed § 19-5-22(4) unconstitutional both as written and as applied. Laudermilk v. Fordice, Civil Action No. 1:95cv161-D-D (N.D. Miss., Dec. 12, 1996) (Order Granting Plaintiffs' Motion for Summary Judgment and Denying Defendants' Motion for Summary Judgment).

Also by that order, this court afforded the plaintiffs an opportunity to request actual damages and attorney's fees. Consequently, the plaintiffs submitted two motions requesting such relief. The first, submitted by plaintiffs' attorneys Nancy H. Stuart and Lawrence R. Kenyon II, is entitled "Motion for Attorney's Fees and Plaintiffs' Expenses." The second, submitted by plaintiffs' attorney Ruby White, is entitled "Plaintiffs' Supplemental Motion for Attorney's Fees and Costs." In these motions, the plaintiffs seek both actual damages and attorney's fees.

II. Discussion

. Actual Damages

The plaintiffs seek actual damages totaling approximately $5,942.00 to compensate them for the expenses they incurred as a result of not being able to drive. As the Supreme Court has explained, though, "no compensatory damages may be awarded in a § 1983 suit absent proof of actual injury." Farrar v. Hobby, 506 U.S. 103, 112, 113 S. Ct. 566, 573, 121 L. Ed. 2d 494 (1992) (citing Carey v. Piphus, 435 U.S. 247, 263, 98 S. Ct. 1042, 1052, 55 L. Ed. 2d 252 (1978)); see also Myrick v. Dallas, 810 F.2d 1382, 1385 (5th Cir. 1987). Here, the plaintiffs have failed to prove actual injury. There is no evidence before this court that, had the defendants afforded the plaintiffs a pre-deprivation hearing, the plaintiffs would have been able to drive. That is, the plaintiffs present no justification for failing to pay their garbage fees. Therefore, even had the defendants provided the plaintiffs with a pre-deprivation hearing, the defendants

were still justified in refusing to renew the automobile license tags. See Carey, 435 U.S. at 263 ("[T]he injury caused by a justified deprivation . . . is not properly compensable under § 1983."). In sum, the plaintiffs were unable to drive not because the defendants violated their due process guarantees, but because the plaintiffs themselves failed to pay their garbage collection fees.

. Attorney's Fees

The plaintiffs also seek attorney's fees pursuant to 42 U.S.C. § 1988. Section 1988 provides in relevant part,

> In any action or proceeding to enforce a provision of [§ 1983,] . . . the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs . . . .

42 U.S.C. § 1988. "The purpose of § 1988 is to ensure 'effective access to the judicial process' for persons with civil rights grievances. Accordingly, a prevailing plaintiff 'should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust.'" Hensley v. Eckerhart, 461 U.S. 424, 429, 103 S. Ct. 1933, 1941, 76 L. Ed. 2d 40, 48 (1983) (citations omitted); see Blanchard v. Bergeron, 489 U.S. 87, 89, 109 S. Ct. 939, 103 L. Ed. 2d 67 (1989).

. Whether the Plaintiffs Prevailed

> A plaintiff must be a "prevailing party" to recover an attorney's fee under § 1988. The standard for making this threshold determination has been framed in various ways. A typical formulation is that "plaintiffs may be considered 'prevailing parties' for attorney's fees purposes if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing the suit." This is a generous formulation . . . .

Hensley, 461 U.S. at 433 (citations omitted). Here, this court granted the plaintiffs' motion for summary judgment. The issue on which this court granted the plaintiffs' summary judgment

motion was a significant issue in the case. In fact, it was the only issue in the case: whether the defendants violated the plaintiffs' procedural due process guarantees. Further, in granting the motion, this court awarded the plaintiffs nominal damages and injunctive relief. The Supreme Court has held that a plaintiff who wins nominal damages is a "prevailing party" under § 1988. Farrar v. Hobby, 506 U.S. 103, 113 S. Ct. 566, 573, 121 L. Ed. 2d 494 (1992). Accordingly, this court finds that the plaintiffs are such a "prevailing party."

. Whether the Fee is Reasonable

The Supreme Court has provided that "[t]he most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." Hensley, 461 U.S. at 433. The product of these two factors — number of hours and the hourly rate — is called the "lodestar." League of United Latin Am. Citizens (LULAC) v. Roscoe Indep. Sch. Dist., 119 F.3d 1228, 1232 (5th Cir. 1997); Von Clark v. Butler, 916 F.2d 255, 258 (5th Cir. 1990). The fee applicant bears the burden of proving the reasonableness of the number of hours claimed. Hensley, 461 U.S. at 437; Cooper v. Pentecost, 77 F.3d 829, 832 (5th Cir. 1996). "Where the documentation of hours is inadequate, the district court may reduce the award accordingly." Hensley, 461 U.S. at 433. The district court may also reduce the award where the hours are "excessive, redundant, or otherwise unnecessary." Id. at 434. The fee applicant also bears the burden of proving the reasonableness of the rate claimed. Blum v. Stenson, 465 U.S. 886, 895, 104 S. Ct. 1541, 79 L. Ed. 2d 891, 900 n.11 (1984). In Blum, the Supreme Court explained,

> To inform and assist the court in the exercise of its discretion, the burden is on the fee applicant to produce satisfactory evidence — in addition to the attorney's own affidavits — that the requested rates are in line with those prevailing in the

> community for similar services by lawyers of reasonably comparable skill, experience, and reputation. A rate determined in this way is normally deemed to be reasonable, and is referred to — for convenience — as the prevailing market rate.

Blum, 465 U.S. at 895 n.11.

Once the lodestar is calculated, the district court must address its reasonableness as a whole. Hensley, 461 U.S. at 434 ("The product of reasonable hours times a reasonable rate does not end the enquiry."); Longden v. Sunderman, 979 F.2d 1095, 1099 (5th Cir. 1992). In doing so, the district court must consider the twelve factors which the United States Court of Appeals for the Fifth Circuit set out in Johnson v. Georgia Highway Express, Inc. Alberti v. Klevenhagen, 896 F.2d 927, 929-30 (5th Cir.), vacated in part on other gounds, 903 F.2d 352 (5th Cir. 1990); Leroy v. City of Houston, 831 F.2d 576, 583 n.11 (5th Cir. 1987), cert. denied, 486 U.S. 1008, 108 S. Ct. 1735, 100 L. Ed. 2d 199 (1988). These factors are

> (1) the time and labor required;
> (2) the novelty and difficulty of the questions involved;
> (3) the skill required to perform the legal service properly;
> (4) the preclusion of other employment by the attorney due to the acceptance of the case;
> (5) the customary fee;
> (6) whether the fee is fixed or contingent;
> (7) the time limitations imposed by the client or the circumstances;
> (8) the amount involved and the results obtained;
> (9) the experience, reputation, and ability of the attorneys;
> (10) the "undesirability" of the case;
> (11) the nature and the length of the professional relationship with the client;
> (12) awards in similar cases.

Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 717-19 (5th Cir. 1974). After considering these factors, the district court may adjust the lodestar upward or downward. LULAC, 119 F.3d at 1232; see also Walker v. United States Dep't of Hous. and Urban Dev., 99

F.3d 761, 771-73 (5th Cir. 1996) (describing limited circumstances in which adjustment to lodestar is appropriate). Of course, although the district court must consider each factor, the court need not act upon any of them. Louisana Power & Light Co. v. Kellstrom, 50 F.3d 319, 330-31 (5th Cir.), cert. Denied, -- U.S. --, 116 S. Ct. 173, 133 L. Ed. 2d 113 (1995); see Uselton v. Commercial Lovelace Motor Freight, Inc., 9 F.3d 849, 854 (10th Cir. 1993) ("[R]arely are all the Johnson factors applicable . . . .").

. Nancy H. Stuart

The plaintiffs' attorney Nancy H. Stuart alleges that she worked 117.25 hours on the case at bar. Motion for Attorney's Fees and Plaintiffs' Expenses, exhibit "A," ¶ 1. However, Ms. Stuart fails to allege the second factor of the lodestar: a reasonable hourly rate. Therefore, this court must determine a reasonable rate for her.

On this point, Ms. Stuart claims that the prevailing market rate ranges from $100.00 per hour to $200.00 per hour. Id. at ¶ 9. However, she offers no proof supporting this claim. See Blum, 465 U.S. 895 n.11 (requiring evidence beyond the attorney's own affidavit). The only support which Ms. Stuart offers this court is a discussion of cases addressing awards of attorney's fees. Motion for Attorney's Fees and Plaintiffs' Expenses, exhibit "A," ¶ 15. In one of these cases, the Honorable L.T. Senter, Jr., Chief Judge of this court, held that rates of $90.00 per hour and $125.00 per hour were reasonable in an employment discrimination action in northern Mississippi. Shirley v. Chrysler First, Inc., 763 F. Supp. 856, 859 (N.D. Miss. 1991). In another of these cases, the Fifth Circuit held that the rates of $90.00 per hour and $120.00 per hour were reasonable in a Section 1983 action in northern Mississippi. Islamic Center of Miss. v. Starkville, 876 F.2d 465, 469 (5th Cir. 1989) (stating rates of $90.00 per hour and $120.00 per

hour were "' in line with' rates 'prevailing in the community for similar services by lawyers' who are reasonably comparable") (quoting Blum, 465 U.S. at 895 n.11). Considering these authorities, this court finds that the top end of the range Ms. Stuart asserts, $200.00 per hour, exceeds the prevailing market rate.[2] The highest rate this court is prepared to award in the case *sub judice* is the highest rate contained in the authorities Ms. Stuart cited: $125.00 per hour. Likewise, this court is prepared to award her a rate as low as the bottom rate in those authorities: $90.00 per hour.

In determining the rate, this court must "value the service according to the customary fee and quality of the legal work." Shirley, 763 F. Supp. at 857 (quoting Copper Liquor, Inc. v. Adolph Coors Co., 684 F.2d 1087, 1092 (5th Cir. 1982) (Copper Liquor III), modified on other grounds, 701 F.2d 542 (5th Cir. 1983) (en banc), overruled on other grounds, International Woodworkers of America, AFL-CIO v. Champion Int'l Corp., 790 F.2d 1174, 1175 (5th Cir. 1986)). Ms. Stuart declares that since graduating from law school in 1981 she has represented over 600 clients, primarily in bankruptcy and domestic relations matters. Motion for Attorney's Fees and Plaintiffs' Expenses, exhibit "A," ¶ 5. However, it appears that she has little experience in civil rights litigation and has only tried one case in federal court. Id. at ¶¶ 4 and 5. Accordingly, this court concludes that a reasonable rate for Ms. Stuart's services falls in the middle ground of the range discussed above. In computing Ms. Stuart's lodestar, this court finds

[2] In so finding, this court recognizes that inflation may have affected the prevailing market rate since Shirley and Islamic Center. However, the plaintiffs do not address inflation, and this court does not feel that the $200.00 per hour rate accurately reflects the prevailing market rate even in consideration of this factor.

the hourly rate of $110.00 reasonable.[3]

As to the other lodestar factor, Ms. Stuart alleges that she worked 117.25 hours on the case at bar. Motion for Attorney's Fees and Plaintiffs' Expenses, exhibit "A," ¶ 13. Ms. Stuart bears the burden of proving the reasonableness of this figure. See Hensley, 461 U.S. at 437; Cooper, 77 F.3d at 832; Leroy, 831 F.2d at 586. Supporting her claim, Ms. Stuart submits what she labels the "Activity Report of Nancy H. Stuart." Motion for Attorney's Fees and Plaintiffs' Expenses. After carefully reviewing the report, this court concludes that the documentation of hours is inadequate. The entries contain general language, and most of them consist of four words or less.[4] As the Supreme Court warned in Hensley, "[w]here the documentation of hours is inadequate, the district court may reduce the award accordingly." Hensley, 461 U.S. at 433. Recently the Fifth Circuit reversed a district court's reduction of hours where the attorneys recorded hours "to a tenth of an hour" and provided "a short but thorough description of the services rendered." LULAC, 119 F.3d at 1233. As opposed to the hours in LULAC, the hours here were recorded in quarter-hour increments, failing to account for work of a shorter duration. Further, 29 of the entries, totaling approximately 20.5 hours, were marked simply "phone call to client," "letter to client," or "interview client." And 5 of the entries, totaling approximately 17 hours, were marked simply "research" or "research legal issues." See LULAC, 119 F.3d at 1233 (stating reduction for vagueness proper where fee applicant merely submits entry for "research

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[3] Incidentally, $110.00 per hour is the rate Ruby White requested.

[4] Further, the report was prepared after-the-fact. As Ms. Stuart states, it was "compiled from time records, telephone records, telephone messages, travel forms, calendars and the case file . . . ." Motion for Attorney's Fees and Plaintiffs' Expenses, ¶ 13; see Leroy, 831 F.2d at 585 (remanding for reduction where the attorneys' records "lacked explanatory detail" and were "reconstructed, after-the-fact," and "scanty").

and review of cases"). These descriptions, totaling 37.5 hours, are vague. Accordingly, this court will reduce the 37.5 vague hours approximately by half, specifically disallowing 19 hours from the computation of Ms. Stuart's lodestar.

This court will also reduce the number of hours Ms. Stuart's claims because many of them strike this court as excessive and unnecessary. As the Supreme Court stated in Hensley, district courts may reduce attorney's fees awards where the hours claimed are "excessive, redundant, or otherwise unnecessary." Hensley, 461 U.S. at 434. Recently, the Fifth Circuit emphasized that district courts must reduce attorney's fees awards where attorneys do not exercise billing judgment, *i.e.*, exclude "unproductive, excessive, or redundant hours." Walker, 99 F.3d at 770. Here, Ms. Stuart failed to exercise billing judgment by including in her report many hours which strike this court as unproductive, unnecessary or redundant. For example, Ms. Stuart logged 16.25 hours of telephone conferences with Mr. Kenyon and Ms. White, who also seek fees for these hours. Ms. Stuart also logged 11.5 hours for the time she spent preparing the attorney's fees report itself, a work product which this court deems cursory. These 27.75 hours (16.25 for the telephone conferences and 11.5 for the time preparing the report) strike this court as both excessive and redundant, and Ms. Stuart fails her burden to prove otherwise. Therefore, this cn. Considering this deduction, as well as the deduction of 19 hours for inadequate documentation, the total number of hours this court will employ in calculating Ms. Stuart's lodestar is 84.25.

Therefore, this court will compute Ms. Stuart's lodestar for 84.25 hours of work at $110.00 per hour. This calculation yields a total of $9,267.50. Now what remains is a review of the reasonableness of this figure. Since most of the factors set out in Johnson v. Georgia

Highway Express, Inc. apply uniformly to each of the plaintiffs' attorneys, the court will review the lodestars as one whole.

b. Lawrence R. Kenyon II

The plaintiffs' attorney Lawrence R. Kenyon II alleges that he worked 70 hours[5] on the case at bar. Motion for Attorney's Fees and Plaintiffs' Expenses, exhibit "B," ¶ 1. However, like Ms. Stuart, Mr. Kenyon fails to allege the second factor of the lodestar: a reasonable hourly rate. Therefore, this court must determine a reasonable rate for him.

Like Ms. Stuart, Mr. Kenyon claims that the prevailing market rate ranges from $100.00 per hour to $200.00 per hour. Id. at ¶ 9. However, also like Ms. Stuart, he offers no proof supporting this claim. See Blum, 465 U.S. 895 n.11 (requiring evidence beyond the attorney's own affidavit). Mr. Kenyon does cite several cases to support the range he asserts. However, those cases are the same ones which Ms. Stuart cited. Therefore, this court's reasoning regarding Ms. Stuart's rate applies equally here. For the reasons this court set forth above, this court will choose for Mr. Kenyon an hourly rate from the range from which it chose Ms. Stuart's rate: $90.00 per hour to $125.00 per hour.

As to what particular figure to choose, this court notes that Mr. Kenyon graduated from law school in 1995. Since that time, he has represented approximately 50 clients and concentrated his efforts primarily in the bankruptcy and domestic relations fields. As to his experience in federal court, Mr. Kenyon states, "I have litigated case [sic] in state and federal court." Motion for Attorney's Fees and Plaintiffs' Expenses, exhibit "B," ¶ 4. However, Mr.

[5] Mr. Kenyon states in his declaration that he expended only 69 hours on this case. However, the hours he lists on his activity report total 70 hours. Therefore, this court considers Mr. Kenyon to be alleging a total of 70 hours of labor on the case at bar.

Kenyon does not state how many of the cases were federal. Considering these facts, as well as the success which the plaintiffs achieved, this court feels that Mr. Kenyon merits the rate of $90.00 per hour.

Regarding the second lodestar factor, Mr. Kenyon alleges that he worked 70 hours on the case at bar. Supporting his claim, Mr. Kenyon submits what he labels the "Activity Report of Lawrence R. Kenyon, II." Motion for Attorney's Fees and Plaintiffs' Expenses. After carefully reviewneral language like that contained in Ms. Stuart's report, the entries as a whole contain sufficient detail to give this court an adequate picture of the work he performed. For example, on June 26, 1996, Mr. Kenyon states that he "[c]ompleted second draft of brief and motion which included blue booking and adding table of authorities and table of contents." Motion for Attorney's Fees and Plaintiffs' Expenses, Activity Report of Lawrence R. Kenyon II. This description tells the court much more than any of Ms. Stuart's descriptions, for example her entry on May 14, 1996, simply stating "Prepare document." Motion for Attorney's Fees and Plaintiffs' Expenses, Activity Report of Nancy H. Stuart. This court will calculate Mr. Kenyon's lodestar using the factor of 70 hours.

Therefore, Mr. Kenyon's lodestar is the product of 70 hours of work at $90.00 per hour. This calculation yields a total of $6,300.00. Now what remains is a review of the reasonableness of this figure. Since most of the factors set out in Johnson v. Georgia Highway Express, Inc. apply uniformly to each of the plaintiffs' attorneys, the court will review the lodestars as a whole.

. Ruby White

The plaintiffs' attorney Ruby White alleges that she worked 22.85 hours on the case at bar and that a reasonable rate for her services is $110.00 per hour. Plaintiffs' Supplemental

Motion for Attorney's Fees and Costs. Supporting her claim of 22.85 hours, Ms. White submits what she labels the "Activity Report of Ruby White." After carefully reviewing the report, this court finds the report as scanty as Ms. Stuart's. Out of its 36 entries, 18 are simply marked "Telephone conference with Nancy Stuart," save one which elaborates as follows: "Conference with Nancy Stewart in Grenada." These 18 entries, totaling 12.75 hours, were inadequately documented. As the Supreme Court warned in Hensley, "[w]here the documentation of hours is inadequate, the district court may reduce the award accordingly." Hensley, 461 U.S. at 433. Accordingly, this court will reduce the number of hours Ms. White submits by reducing the 12.75 vague hours approximately by half, specifically disallowing 7.85 hours from the computation of Ms. Stuart's lodestar.[6] Therefore, instead of the 22.85 hours Ms. White asserts, the number of hours this court deems appropriate in computing Ms. White's lodestar is 15 hours.

As to the other factor of the lodestar, the hourly rate, this court notes that, unlike Ms. Stuart and Ms. Kenyon, Ms. White asserts a particular rate for her services: $110.00 per hour. Plaintiffs' Supplemental Motion for Attorney's Fees and Costs. In reviewing this rate, the court notes that Ms. White has practiced law since 1980 and has worked for North Mississippi Rural Legal Services since 1986. She alleges that she has "litigated numerous issues in state courts and federal court," although she fails to elaborate upon this experience. Plaintiff's Supplemental Motion for Attorney's Fees and Costs, Declaration of Ruby White, ¶ 4. Considering these facts and the success which the plaintiffs achieved in the case at bar, as well as the discussion in the preceding sections regarding the prevailing market rate, this court concludes that the rate Ms.

[6] These hours also strike the court as excessive, redundant and unnecessary, a second ground for the reduction. See Hensley, 461 U.S. at 434; Walker, 99 F.3d at 770.

White asserts, $110.00 per hour, is a reasonable rate.

Therefore, Ms. Whites's lodestar is the product of 15 hours of work at $110.00 per hour. This calculation yields a total of $1,650.00. Now what remains is a review of the reasonableness of this figure. Since most of the factors set out in Johnson v. Georgia Highway Express, Inc. apply uniformly to each of the plaintiffs' attorneys, the court will review their lodestars as a whole.

. Computerized Legal Research Expenses

Lastly, Ms. Stuart and Ms. White seek an award to cover charges they incurred while performing research on the Westlaw computerized legal database. Specifically, Ms. Stuart seeks $1020.21 and Ms. White seeks $54.17. The Fifth Circuit has provided, "All reasonable out-of-pocket expenses, including charges for photocopying, paralegal assistance, travel, and telephone, are plainly recoverable in section 1988 fee awards because they are part of the costs normally charged to a fee-paying client." Associated Builders & Contractors of La., Inc. v. The Orleans Parish School Board, 919 F.2d 374, 380 (5th Cir. 1990). Under this reasoning, the cost of reasonable computerized legal research is recoverable. See also United States v. Merritt Meridian Constr. Corp., 95 F.3d 153, 173 (2nd Cir. 1996) ("[C]omputer research is merely a substitute for an attorney's time that is compensable under an application for attorneys' fees . . . ."); Haroco, Inc. v. American Nat'l Bank and Trust Co. of Chicago, 38 F.3d 1429, 1440 (7th Cir. 1994); Johnson v. University College of the Univ. of Ala. in Birmingham, 706 F.2d 1205, 1209 (11th Cir. 1983). Likewise, unreasonable computerized legal research is not recoverable. See Mississippi State Chapter Operation Push (Push) v. Mabus, 788 F. Supp. 1406, 1423 n.34 (N.D. Miss. 1992) (warning against "charges for excessive and unnecessary computer legal research").

"The test, as always, is one of reasonableness." Johnson, 706 F.2d at 1209.

Here, attorneys performed research on a single question of constitutional law, specifically whether the defendant's refusal to issue automobile license tags without a pre-deprivation hearing constituted a violation of the plaintiffs' procedural due process guarantees. While the court recognizes the importance of thorough legal research on a question such as this — or for that matter on any legal question — the court also recognizes that an attorney can research to an excess. The legal question at issue, a relatively straight-forward question in this court's view, did not justify $1,074.38 worth of research on a computerized database. This court feels that the attorneys could have adequately researched the question in a more efficient manner. As this court stated on a prior occasion, "approving [excessive] expenditures could be viewed as underwriting a portion of counsels' law library." Push, 788 F. Supp. at 1423 n.34. Accordingly, the extent of attorney's fees this court is prepared to award for the cost of computerized legal research is $500.00.

. The Lodestar Adjustment

As this court calculated above, the lodestars for the plaintiffs' attorneys are $9,267.50 for Nancy H. Stuart, $6,300.00 for Lawrence R. Kenyon II, and $1,650 for Ruby White. These lodestars, plus the $500.00 for computerized legal research, total $17,717.50. The court will now evaluate this total in light of the twelve Johnson factors. In doing so, this court notes that it considered several of the factors in the calculating the lodestar itself. For example, the court discussed the first factor, the time and labor required, when it evaluated the number of hours the attorneys worked. Therefore, in evaluating the lodestar, this court will be careful not to double-count these factors. See Walker, 99 F.3d at 771; Shipes v. Trinity Indus., 987 F.2d 311, 320 (5th

Cir.), cert. denied, 510 U.S. 991, 114 S. Ct. 548, 126 L. Ed. 2d 450 (1993). That said, the court makes the following observations:

(1) The time and labor required — This case was resolved on summary judgment. No discovery was conducted. The time and labor consisted primarily of work on the pleadings and the summary judgment motions. This factor favors a downward adjustment.

(2) The novelty and difficulty of the questions involved — This case presented a basic due process question: whether the defendants had deprived the plaintiffs of some property interest without due process of law. The plaintiffs argue that the case was novel and difficult because they could not find precedent "on all fours" with the case at bar. However, the inability to find such precedent does not make a case novel or difficult. Indeed, the question here was novel only in the sense that no court had yet ruled on the constitutionality of § 19-5-22(4) of the Mississippi Code, and numerous opinions of the Supreme Court and the Fifth Circuit were available to the plaintiffs to illustrate the pertinent points of law. In sum, this court considers the due process questions presented here relatively straight-forward. This factor favors a downward adjustment.

(3) The skill required to perform the legal service properly — No special skill was required, save the necessity of being able to navigate a civil rights case through the federal court system. This factor favors no adjustment.

(4) The preclusion of other employment by the attorney due to the acceptance of the case — The plaintiffs' attorneys do no argue that this case precluded other employment, and this court is aware of no such preclusion. This factor favors no adjustment.

(5) The customary fee — As stated above, the plaintiffs do not present sufficient evidence

of the customary fee, save their citation to cases awarding attorney's fees in similar cases. This factor favors no adjustment.

(6) Whether the fee is fixed or contingent — The plaintiffs' attorneys work for North Mississippi Rural Legal Services. This organization provides legal services at no charge to qualified parties. The plaintiffs' attorneys state, however, that there was a fee arrangement in that the parties understood the organization may recover fees under § 1988. Since the application of § 1988 hinges on the plaintiffs' status as a prevailing party, the plaintiffs argue, the fee was a contingent one. In so arguing, though, the plaintiffs do not indicate that they expected the fee to be multiplied or enhanced in any way. This factor favors no adjustment.

(7) The time limitations imposed by the client or the circumstances — The parties do not present evidence on this point. This factor favors no adjustment.

(8) The amount involved and the results obtained — Since the plaintiffs did not seek compensatory damages, only the amount of the nominal damages award was involved. The results obtained were nominal damages and injunctive relief. This relief was largely what the plaintiffs sought. This factor favors an upward adjustment.

(9) The experience, reputation, and ability of the attorneys — Ms. Stuart and Ms. White have practiced law approximately seventeen years but have taken little part in civil rights litigation in federal court. Mr. Kenyon has practiced law approximately two years and has little experience in this area as well. The parties present no proof as to the attorneys' reputations. As to their ability, this court recognizes that, although missing some of the finer points in the field, they accomplished the goals of this litigation with reasonable competency. This factor favors no adjustment.

(10) ndividual plaintiffs whose due process guarantees have allegedly been violated is a worthy assignment. However, the plaintiffs here failed to pay garbage fees, a stance which was unpopular in the community. Most citizens of the community readily paid the fees and looked unfavorably upon the plaintiffs for not doing so. Further, this court takes judicial notice of the fact that, upon announcing its decision to grant the plaintiffs' summary judgment motion, this court received telephone calls and letters from individuals complaining about the decision. Considering these reactions, this court finds representation of the plaintiffs an assignment few attorneys would find desirable. This factor favors an upward adjustment.

(11) The nature and the length of the professional relationship with the client — The attorneys allege that the plaintiffs first contacted them approximately 3 years ago and that the contact concerned this case. Therefore, the professional relationship here originated with this case and as far as this court knows is limited to this case. This factor favors no adjustment.

(12) Awards in similar cases — The plaintiffs do not present evidence of awards in similar cases except the citations mentioned above. This factor favors no adjustment.

Having carefully considered each factor, this court concludes that no adjustment to the lodestar total of $17,717.50 is necessary. In so holding, the court recognizes that the eighth factor (results obtained) and the tenth factor (undesirability of the case) weigh in favor of an enhancement to the lodestar. However, the eighth factor cannot serve as a basis for increasing a fee award because it is "presumably fully reflected in the lodestar amount . . . ." Pennsylvania v. Delaware Valley Citizens' Council for Clear Air, 478 U.S. 546, 565, 106 S. Ct. 3088, 3098, 92 L. Ed. 2d 439 (1986). Further, while the tenth factor supports a slight enhancement of the lodestar, other factors support a redhe issues). Overall, then, this court feels that no adjustment is

necessary. This court finds $17,717.50 a reasonable award of attorney's fees.

. Two Arguments Against an Award of Attorney's Fees

. Failure to Win Compensatory Damages

The defendants argue that the plaintiffs, even if they are a prevailing party under § 1988, do not merit attorney's fees because they failed to win compensatory damages. Defendant's, State of Mississippi, [sic] Response to Plaintiffs' Motion for Attorneys' Fees, Expenses and Damages, at 2. This argument is based on the Supreme Court's decision in Farrar v. Hobby, where the Court stated that "'the most critical factor' in determining the reasonableness of a fee award 'is the degree of success obtained.'" Farrar, 506 U.S. at 574 (quoting Hensley, 461 U.S. at 436). Consequently, the Court explained,

> [i]n some circumstances, even a plaintiff who formally "prevails" under § 1988 should receive no attorney's fees at all. A plaintiff who seeks compensatory damages but receives *no more than* nominal damages is often such a prevailing party.

Farrar, 506 U.S. at 575 (emphasis added). Since the plaintiffs did not win compensatory damages, the defendants argue, the plaintiffs do not merit attorney's fees.

This argument fails because the plaintiffs here do not resemble the fee applicant which the Supreme Court described in Farrar. First, the plaintiffs did not seek compensatory damages. As their complaint read, the only relief they sought was declaratory and injunctive relief.[7]

[7] The court notes that the plaintiffs do seek actual damages in today's motion. However, the plaintiffs do so only upon the express invitation of the court in its order granting the plaintiffs' motion for summary judgment. Laudermilk v. Fordice, Civil Action No. 1:95cv161-D-D (N.D. Miss., Dec. 12, 1996) (Order Granting Plaintiffs' Motion for Summary Judgment and Denying Defendants' Motion for Summary Judgment) ("The plaintiffs shall, within twenty-five (25) days of the date of this order, submit to the court a report explaining whether they will seek to recover compensatory damages in this case . . . ."). The court declines to measure the plaintiffs success in relation to relief not sought until now.

Further, while the only damages the plaintiffs received were nominal, the plaintiffs received other relief, namely the injunctive relief which they sought. Hence, the plaintiffs are not the type of plaintiff which Farrar discussed. The degree of overall success which the plaintiffs received, relative to what they sought, was high. See Id. at 106-7 (describing how plaintiffs received none of $17 million in damages which they sought). That the plaintiffs received no compensatory damages is no bar to an award of attorney's fees.

. Waiver

The defendants also argue that the plaintiffs waived their entitlement to attorney's fees. Defendant's, State of Mississippi, Response to Plaintiffs' Motion for Attorneys' Fees, Expenses and Damages, at 2. The defendants base this argument on the following statement in the plaintiffs' Motion for Summary Judgment: "[T]he Plaintiffs pray for the Court to assess the Defendants with court costs and all parties bear the expense of their own attorney fees." Plaintiffs' Motion for Summary Judgment, at 2. This statement, the defendants argue, constituted a waiver of the plaintiffs' eligibility for attorney's fees under § 1988.

First, as this court has already indicated, the above-quoted statement by the plaintiffs is not clear and should not be deemed an express waiver. Laudermilk v. Fordice, Civil Action No. 1:95cv161-D-D (N.D. Miss., Dec. 12, 1996) (Memorandum Opinion) ("The court is unclear whether the plaintiffs shall request [an attorney's fees] award."). Second, the statement is no implied waiver because, in light of the evidence before this court, it fails to reflect an intent to waive. As the plaintiffs explain, and the defendants do not deny, the only reason the plaintiffs prayed that the fees be divided was because they were under the mistaken impression that North Mississippi Rural Legal Services could not recover attorney's fees in this case. Now knowing of

their eligibility for fees, the plaintiffs seek them. This court shall not consider the plaintiffs' above-quoted statement, made in a submission to this court, as a waiver of that eligibility.

In so finding, this court recognizes that a party may waive its eligibility for attorney's fees under § 1988 in a negotiated settlement agreement. See Evans v. Jeff D., 475 U.S. 717, 737-38, 106 S. Ct. 1531, 1542-43, 89 L. Ed. 2d 747 (1986). However, "whether a waiver of fees has occurred [in a negotiated settlement agreement] is governed by basic principles of contract formation." LULAC, 119 F.2d at 1236. In LULAC, one party offered to waive its entitlement to attorney's fees under § 1988. Id. at 1235. Finding that the opposing party failed to accept the offer, the Fifth Circuit ruled that no waiver had occurred. Id. at 1236 ("Because no binding agreement required Garza to forgo his fees, we remand for the calculation of a reasonable attorneys' fee for Garza's services.").

Although the alleged waiver in this case did not arise as it did in LULAC, in the context of a negotiated settlement agreement, this court finds the reasoning in LULAC instructive. Here, the plaintiffs requested in their Motion for Summary Judgment that this court assess each party with its own court costs. Under basic contract principles, even if the plaintiffs' statement in their Motion for Summary Judgment constituted an offer, the defendants' never accepted it. See id. (explaining that counsel opposite "never accepted the offer"). Therefore, considering this reasoning as well, the court finds that no waiver occurred.

. Liability for Attorney's Fees

In this action, the plaintiffs sued both Mississippi State and Oktibbeha County officials in their official capacities. Accordingly, the plaintiffs now ask this court to hold both the state of Mississippi and Oktibbeha County liable for attorney's fees. To this point, the county responds,

"The conduct of Oktibbeha County and its elected officials was in accordance with a legislative mandate from the State of Mississippi and not the result of any discretion on their part." Response of "County" Defendants to Plaintiffs' Motion for Attorneys' Fees, Expenses and Damages, ¶ 1. Therefore, Oktibbeha County argues, the county was, "at best, nominal defendants in this case and as such should not be assessed with any attorneys' fees . . . ." Id. at ¶ 3.

This argument has merit. As the Fifth Circuit has explained, "the State cannot dissociate itself from actions taken under its laws by labeling those it commands to act as local officials." Echols v. Parker, 909 F.2d 795, 801 (5th Cir. 1990) (citing Familias Unidas v. Briscoe, 609 F.2d 391 (5th Cir. 1980). In Echols, where county officials enforced an unconstitutional Mississippi State anti-boycott statute, the arrestees brought a civil rights action against both county and state officials in their official capacities. Echols, 909 F.2d at 797. After prevailing in the action, over which this court presided, the plaintiffs sought attorney's fees. Id. This court awarded attorney's fees and specified that they were to be paid only by the State of Mississippi. Id. Upholding that ruling, the Fifth Circuit stated, " A county official pursues his duties as a state agent when he is enforcing state law or policy." Id. at 801.

Here, the statute in question was a state law. Therefore, when Oktibbeha County officials enforced the statute, they were pursuing their duties as state agents. As such, Oktibbeha County should not be held liable for the award of attorney's fees. The award is charged solely to the State of Mississippi.

III. Conclusion

Upon careful consideration of the plaintiffs' motions for actual damages and attorney's

fees and the responses thereto, this court finds that the motions are not well-taken as to actual damages and should be denied, but are well-taken as to attorney's fees and should be granted. This court awards the plaintiffs $17,717.50 in attorney's fees, to be paid solely by the State of Mississippi.

A separate order in accordance with this opinion shall issue this day.

This the __ day of November 1997.

United States District Judge